

## Update: Contempt of Court Benchbook (Revised Edition)

### CHAPTER 5

#### Common Forms of Contempt of Court

##### 5.6 Violation of Court Orders

###### C. Even Clearly Incorrect Orders Must Be Obeyed

Insert the following text at the end of Section 5.6(C), on page 51:

In *Johnson v White*, \_\_\_ Mich App \_\_\_, \_\_\_ (2004), the Court of Appeals reversed a lower court's finding of contempt against a defendant for violating the court's order for grandparent visitation. On January 10, 2001, the lower court entered an order for grandparent visitation. Three months later, the defendant violated the order by moving his children to another state. On January 25, 2002, the Court of Appeals issued its decision in *DeRose v DeRose*, 249 Mich App 388 (2002), which found the grandparent visitation statute, MCL 722.27b, unconstitutional. On March 28, 2002, the lower court found the defendant in contempt of court for violating its order. The trial court subsequently denied the defendant's motion to vacate the contempt order.

The defendant argued on appeal that the contempt order should have been vacated because the lower court lacked subject matter jurisdiction over the grandparent visitation issue because of the Court of Appeals decision in *DeRose v DeRose*, *supra*. The defendant claimed that MCR 7.215(C)(2) required the lower court to give immediate precedential effect to *DeRose* even though, at the time of the show-cause hearing, an appeal of the decision in *DeRose* was pending in the Supreme Court. MCR 7.215(C)(2) states that a published Court of Appeals opinion has precedential effect and the "filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion . . . ." *Johnson, supra* at \_\_\_. The trial court disagreed and ruled that MCR 7.215(C)(2) should be read in conjunction with MCR 7.215(F)(1)(a), which states that a "Court of Appeals judgment is effective after the expiration of the time for filing a timely application for leave to

appeal the Supreme Court, or, . . . after the disposition of the case by the Supreme Court.” *Johnson, supra* at \_\_\_\_.

The Court of Appeals found the trial court’s reliance on MCR 7.215(F)(1)(a) misplaced. The Court of Appeals stated that MCR 7.215(F)(1)(a) “pertains to the timing of when our judgment becomes final in regards to the parties to the appeal and its enforceability as to those parties by the trial court that presided over the case.” *Johnson, supra* at \_\_\_\_\_. The Court also indicated that MCR 7.215(C)(2) clearly provides that filing an application for leave to appeal to the Supreme Court or an order granting leave does not change the precedential effect of the decision of the Court of Appeals. The Court concluded that the trial court erred in determining that it did not need to give *DeRose, supra*, precedential effect.

The Court of Appeals, citing *Kirby v Michigan High School Athletic Ass’n*, 459 Mich 23, 40 (1998), recognized that an order of the court must be complied with at the time it is entered even if the order is clearly incorrect. Quoting *In re Contempt of Dudzinski*, 257 Mich App 96, 111 (2003), the Court also recognized that “[a] person may not disregard a court order simply on the basis of his [or her] subjective view that the order is wrong or will be declared invalid on appeal.” *Johnson, supra* at \_\_\_\_\_. However, the Court noted that these rules only apply to “an order issued by a court *with jurisdiction over the subject matter* and the person.” (Emphasis in original.) At the time the defendant was held in contempt, the opinion in *DeRose, supra*, had already been issued. Therefore, *DeRose* had binding precedential effect, and the lower court was without jurisdiction over the subject matter of the contempt order. Because the lower court lacked subject matter jurisdiction when it entered the contempt order, the Court of Appeals reversed the lower court’s finding of contempt. *Johnson, supra* at \_\_\_\_\_.